

BOARD OF APPEALS CASE NO. 5292

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BEFORE THE

APPLICANTS: Raymond & Donna Kozlowski

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ZONING HEARING EXAMINER

**REQUEST: Special Exceptions to allow
construction services and storage of commercial
vehicles in the Agricultural District;
3965-A Old Federal Hill Road, Jarrettsville**

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OF HARFORD COUNTY

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HEARING DATE: November 18, 2002

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Hearing Advertised

Aegis: 10/16/02 & 10/23/02

Record: 10/18/02 & 10/25/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Raymond and Donna Kozlowski, Jr. are requesting a special exception, pursuant to Sections 267-53H(1) of the Harford County Code to operate a construction services and suppliers and 267-53D(1), to store commercial vehicles and equipment in an AG/Agricultural zone.

The subject parcel is located at 3965-A Old Federal Hill Road, Jarrettsville, MD 21084 and is more particularly identified on Tax Map 24, Grid 3C, Parcel 12. The subject parcel consists of 2.28± acres, is zoned AG and is entirely within the Fourth Election District.

The Applicant, Raymond Kozlowski appeared and testified that he has parked and operates a tractor/trailer for approximately 10 years on his property. His business is moving office trailers. He generally leaves the property at 6:00 a.m. and returns around 6:00 p.m. five days per week, holidays excepted. He has no other employees and wants permission to keep a single truck and trailer on his property in the same place as he has kept it for 10 years. The Applicant explained that the neighbor to the west is completely screened and the neighbor to the east is screened during warm months by an existing hedgerow. He intends white pine plantings along the eastern side of the property to screen completely, the truck and trailer from his neighbor to the east. In the opinion of the Applicant, the truck has posed no problems of any kind in the 10 years he has parked it there and does not think any problems will exist in the future.

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The Department of Planning and Zoning recommends approval, subject to four (4) proposed conditions. In recommending approval, the Department looked at each requirement of the statutes and the provisions of Section 267-9I of the Code. In discussing the statutory requirements of the Code, the Department specifically determined as follows:

Section 267-53D

Motor vehicle and related services.

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:**
 - (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.**

The property is screened from the adjacent parcels by existing vegetation and forest. As noted, previously, the parking area for the vehicle cannot be seen from the public road.

- (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.**

Not applicable to this request.

- (c) A minimum parcel area of two (2) acres shall be provided.**

The Applicant's property is a 2.28 acre recorded lot. Enclosed with the report is a copy of the final plat for this lot.

Section 267-H

"Services.

- (1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to residential lot or visible from a public road."**

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The Applicant's property fronts on Old Federal Hill Road. The property is a panhandle lot with the parking area for the commercial vehicle being at least 800 feet from the road. Because of the topography and existing vegetation on the site, the commercial vehicle cannot be seen from Old Federal Hill Road

Mr. Michael Amole appeared and testified that he was present in support of the Application. Ms. Joan Hofmann appeared and testified that she is an adjacent property owner living east of the subject property. The witness testified that she has experienced no problems with the Applicant's truck in the 10 years he has operated it from his property but was concerned that any approval to operate additional trucks may impact her use and enjoyment of her property. She would also like to see some additional plantings to screen the truck from view during winter months.

CONCLUSION:

The Applicants, Raymond & Donna Kozlowski, are requesting a special exception, pursuant to Sections 267-53H(1) of the Harford County Code to operate a construction services and suppliers and 267-53D(1) to store commercial vehicles and equipment in an AG/Agricultural zone.

The Applicants have demonstrated that their use can meet or exceed each specific requirement of the Harford County Code. Additionally, the Hearing Examiner has reviewed the Limitations, Guides and Standards and makes the following specific findings:

Section 267-91:

- (1) The number of persons living or working in the immediate area.

This area of the County is rural in nature with no major residential developments. With the amount of farm activity in the area, large vehicles and equipment are not unusual for the community.

- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

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Access to the property is from Old Federal Hill Road, a county maintained road. The Department of Planning and Zoning found that there was adequate sight distance on this road, therefore the proposal should have no adverse impact on traffic or safety. The Applicant has operated his truck at this location without incident for 10 years.

- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

The proposal is a use that is permitted in the Agricultural District with Board approval. The use should not have an adverse fiscal impact.

- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

This vehicle should not create any more impact than other farm equipment and trucks that are operated in the area on a regular basis.

- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.

The County's local Sheriffs Department and the Maryland State Police will provide police protection. Fire protection will be primarily from the Local Volunteer Fire Department. Water and Sewer is provided to the site from an on site well and septic system. The Applicants are required to obtain a private hauler to dispose of trash themselves.

- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

This is a use recognized by the Harford County Code as compatible with other uses permitted as a matter of right in the AG District negating any facts or circumstances negating the presumption.

- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.

None in the immediate vicinity of this parcel.

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- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

The proposal is consistent with the Master Plan.

- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

There are no environmental features that will be impacted by this request.

- (10) The preservation of cultural and historic landmarks.

Not applicable to this request.

The Hearing Examiner finds, based on the facts set forth above, that the Applicant can meet or exceed each and every requirement of the Harford County Code. In addition to specific statutory requirements, Maryland Courts have had occasion to discuss the burden of proof that must be met by an applicant in a special exception case.

Under Maryland law, the special exception use is part of the comprehensive zoning plan sharing the presumption, that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in a particular case is in harmony with the general purpose and intent of the plan. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981) (“Schultz”).

“While the applicant in such a case has the burden of adducing testimony, which will show that, his use meets the prescribed standards and requirements of the zoning code, he does not have the burden of showing affirmatively that his proposed use accords with the general welfare. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely effect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material;

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but if there is not probative evidence of harm or disturbance in light of the nature of the zoning involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for special exception is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A. 2d 543, 550-551 (1973) (“Turner”). The appropriate standard to be used in determining whether a requested special exception use should be denied is whether there are facts and circumstances that show the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. See Schultz at 432 A. 2d 1327.

Such facts and circumstances must be strong and substantial to overcome the presumption that the proposed use be allowed in the district. Anderson v. Sawyer, 23 Md. App. 612, 329 A. 2d 716, 724 (1974) (“Anderson”).

The law in Maryland is clear that the localized impact caused by a special exception must be unique and atypical in order to justify denial. Sharp v. Howard County Board of Appeals, 98 Md. App. 57, 632 A. 2d 248 (1993) (“Sharp”).

In determining whether the presence of the proposed uses would be more harmful here than if located elsewhere in the AG zone, one must take into account the area where the use is proposed. AT&T Wireless Services v. Mayor and City Council of Baltimore, 123 Md. App. 681, 720 A. 2d 925 (1998) (“AT&T”).

In Mossburg v. Montgomery County, 107 Md. App. 1, 666 A. 2d 1253 (1995) (“Mossburg”) the Court of Special Appeals had occasion to restate and clarify the law in Maryland regarding special exceptions. There the Court found that the Board of Appeals of Montgomery County improperly denied a special exception for a solid waste transfer station in an industrial zone. In reversing the Circuit Court, which upheld the Board's decision, the Court of Special Appeals found that the decision to deny the special exception was not based on substantial evidence of adverse impact at the subject site greater than or above and beyond impact elsewhere in the zone and, therefore, the decision was arbitrary and illegal.

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There the Court said:

“The question in the case sub judice, therefore, is not whether a solid waste transfer station has adverse effects. It inherently has them. The question is also not whether the solid waste transfer station at issue here will have adverse effects at this proposed location. Certainly it will and those adverse effects are contemplated by the statute. The proper question is whether those adverse effects are above and beyond, i.e. greater here than they would generally be elsewhere within the areas of the County where they may be established, ... In other words, if it must be shown, as it must be, that the adverse effects at the particular site are greater or “above and beyond”, then it must be asked, greater than what? Above and beyond what? Once an applicant presents sufficient evidence establishing that his proposed use meets the requirements of the statute, even including that it has attached to it some inherent adverse impact, an otherwise silent record does not establish that that impact, however severe at a given location, is greater at that location than elsewhere.” (emphasis supplied)

Thus, the Court of Special Appeals emphasized that once the applicant shows that it meets the requirements for the special exception under statute, the burden then shifts to the Protestants to show that impacts from the use at a particular location are greater at this location than elsewhere. If the Protestants fail to meet that burden of proof, the requested special exception must be approved.

In the instant case there were no facts or circumstances presented to the Hearing Examiner that would lead to the conclusion that this use at this location would present some unusual or different impact not generally associated with such a use regardless of its location within the zone. To the contrary, the Hearing Examiner was presented with facts showing that the Applicant can meet or exceed each and every statutory requirement and that this use has been carried on at this location without incident or impact for ten (10 years).

For all of the foregoing reasons, the Hearing Examiner recommends approval, subject to the following conditions:

1. The Applicants shall obtain a Zoning Certificate for the use on this property.
2. This approval is for one commercial vehicle (tractor and trailer) only. No other equipment, other than personal use vehicles, may be stored on the property.
3. The existing vegetation shall remain on the parcel to provide screening.

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4. The Applicant shall plant a double row of 6-8 foot white pine trees along the eastern side of the parcel to provide screening for residences east of the parking area. Applicant shall submit a landscaping plan to the Department of Planning and Zoning for its review and approval.
5. The grant of the special exception herein is for the use of the Applicant named herein exclusively and may not be transferred to the use of another.
6. If the structure shown on the submitted Plat and identified as “future garage” is constructed in the future, it will be constructed pursuant to a validly issued permit and will maintain a minimum 40 foot side yard setback.

Date DECEMBER 13, 2002

**William F. Casey
Zoning Hearing Examiner**